

TITLE 20. CALIFORNIA ENERGY COMMISSION

NOTICE OF PROPOSED ACTION FOR ADOPTION OF REGULATIONS GOVERNING DATA COLLECTION AND EXEMPTIONS FROM COST RECOVERY SURCHARGE

California Energy Commission
Docket No. 03-CRS-01

NOTICE

The California Energy Commission (Commission) proposes to adopt regulations under the authority of Public Resources Code sections 25213 and 25218(e) and Title 20, California Code of Regulations, section 1220 et seq. The regulations would implement Public Resources Code sections 25216, 25216.5, 25301, and 25320, which set forth the Commission's authority to collect data, conduct assessments and forecasts of all aspects of energy industry supply, production, transportation, delivery and distribution, demand, prices, and encourage cooperation with state agencies sharing energy related responsibilities.

In particular, the proposed regulations would allow the Commission to collect data associated with the deployment of distributed generation (DG). The collected data would assist the Commission in preparing its Integrated Energy Policy Report (IEPR) and assessing the contributions of DG to the overall reliability of California's electrical system. The data would also allow the Commission to assess the potential for departing load, which could affect the Commission's forecasts of electricity demand. Departing load refers to that portion of the utility customer's electric load for which the customer: (1) discontinues or reduces its purchase of bundled or direct access service from the utility; (2) purchases or consumes electricity supplied and delivered by "Customer Generation" to replace the utility or Direct Access purchases; and (3) remains physically located at the same location or elsewhere within the utility's service territory.

Finally, the data collected would be useful to the California Public Utilities Commission (CPUC) to make determinations as to whether departing load customers are eligible for an exemption from the cost responsibility surcharge (CRS), part of the energy cost obligations associated with the California energy crisis of 2000-01, as set forth by the CPUC in Decision 03-04-030. Both the Commission and the CPUC are interested in recovery of energy cost obligations without hindering the effective deployment of DG technologies throughout the State.

The proposed regulations set forth the form, type of information to be submitted, and the process for submitting data to the Commission for tracking new DG facilities and making determinations as to their eligibility for the CRS exemption. The date set for adoption of the proposed regulations is as follows:

Commission Business Meeting
October 22, 2003
Beginning at 10 a.m.
California Energy Commission
Hearing Room A
1516 9th Street
Sacramento, CA 95814

ORAL AND WRITTEN STATEMENTS

Interested persons may present oral or written statements about the proposed regulations at the hearing mentioned above. In addition, written comments may also be filed with the Commission on or before 5 p.m. October 20, 2003 by submitting them to:

Docket Unit
California Energy Commission
Docket No. 03-CRS-01
1516 9th Street, MS-4
Sacramento, CA 95814

INITIAL AND FINAL STATEMENTS OF REASONS AND TEXT OF REGULATIONS

The Commission has prepared a complete text of the proposed regulations and an initial statement of reasons for the proposed regulations. To obtain a copy of the proposed regulations and initial statement of reasons, please contact Linda Merdinger at (916) 654-3951 or by e-mail at lmarding@energy.state.ca.us. Additionally, the Commission has available all the information upon which the proposed regulations are based. To obtain copies, please contact the Docket Unit at the above address, or call (916) 654-5076. For information involving the rulemaking process, contact Darcie Houck at (916) 654-3855 or by e-mail at dhouck@energy.state.ca.us, or for information about this rulemaking contact Scott Tomashefsky at (916) 654-4896 or by e-mail at stomashe@energy.state.ca.us. Information, including the text of the regulations, Notice of Proposed Action, and Initial Statement of Reasons are posted on the Commission website at www.energy.ca.gov.

When prepared, the Final Statement of Reasons will be made available by contacting the above persons.

PUBLIC ADVISOR

The Commission's Public Advisor is available to assist any person who wishes to participate in this proceeding. For assistance from the Public Advisor, please call

Roberta Mendonca at (916) 654-4489 or toll free at (800) 822-6228, or by e-mail at rmendonc@energy.state.ca.us.

INFORMATIVE DIGEST

Role of Commission

The Commission was created by the Warren-Alquist State Energy Resources Conservation and Development Act (Public Resources Code section 25500 et seq.). The Act vests the Commission with a wide range of duties and responsibilities related to the development and conservation of energy resources in California. As the agency responsible for establishing the state's energy policy, the Commission collects, stores, analyzes, and disseminates a broad range of information. These activities involve conducting a wide range of assessments and forecasts for all aspects of the energy industry: supply, production, transportation, delivery and distribution, demand, and prices.

Order Instituting Rulemaking

On May 28, 2003, the Commission adopted an Order Instituting Rulemaking (OIR) to consider the adoption of regulations to collect data related to DG deployment and determination of eligibility for CRS exemptions as set forth in the recent CPUC Decision 03-04-030. The Commission intends to set forth a process to collect data that will provide information as to the timing, type, technology, efficiency, and capacity of customer generation eligible for a CRS exemption. The publication of this Notice of Proposed Action initiates the formal rulemaking process.

The Commission must provide a minimum of 45-days for public comment prior to agency adoption of the regulations. The Commission, upon its own motion or at the insistence of any interested party, may thereafter adopt the proposals substantially as described in this notice or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be made available for 15 days prior to its adoption from the person designated in this Notice as the contact person and will be mailed to those persons who submit any written or oral testimony to this proposal, or who have requested notification of any changes to the proposal.

Existing Laws and Regulations

There are several sections of the Public Resources Code that direct the Commission to conduct assessments and forecasts of all aspects of the energy industry in the state and that authorize the Commission to collect the data needed to carry out its responsibilities.

Section 25216 states that the Commission shall “[u]ndertake a continuing assessment of trends in the consumption of electrical energy and other forms of energy and analyze the social, economic, and environmental consequences of these trends.” Section 25216.5 designates the Commission as the central repository within state government for the collection of data on all forms of energy supply and demand, among other matters. Section 25310 directs the Commission to conduct assessments and forecasts of all aspects of energy supply, demand, and prices, among other matters. Section 25320 requires the Commission to adopt an extensive data collection system to obtain the information necessary to perform the duties of the Commission. All these sections give the Commission broad authority to collect information on energy related issues of statewide importance.

Additionally, section 25300 of the Public Resources Code declares that state government requires at all times a complete and thorough understanding of the operation of all aspects of the energy industry, that timely reporting, assessment, forecasting, and data collection activities are essential to serve the needs of the government, and that cooperation among the various state agencies with energy responsibilities shall be encouraged.

As a related matter, the CPUC has recently adopted Decision 03-04-030 in CPUC OIR R.02-01-011 regarding the CRS for departing load customers. This Decision sets forth the criteria for exempting eligible customers from the surcharge. In the Decision, the CPUC notes that the Commission’s data collection experience makes the agency the “logical” entity to collect the data based on criteria established in the Decision. As lead energy data collector for the state, the Commission is clearly in the best position to collect the information necessary for determining eligibility for the exemption based on the CPUC’s adopted criteria. This role for the Commission clearly falls within the Commission’s broad data collection responsibilities, and furthers cooperation among state agencies with energy responsibilities.

Effect of the Proposed Action

The proposed regulations would set forth a process for the collection of data that the Commission would utilize in making energy assessments and forecasts related to DG, as well as provide to the CPUC in the determination of the CRS exemptions allowed under CPUC Decision 03-04-030. The process would state the type of information needed to assess deployment, determine the eligibility for CRS exemptions based on the CPUC’s Decision, set forth timing and queue-related requirements, and establish a dispute-resolution process. The process would also allow for the timely collection of information to be utilized by the Commission in its biennial IEPR process. Through a cooperative effort with the CPUC, the proposed regulations would ultimately be implemented by the state’s investor-owned utilities per CPUC directive.

Comparable Federal Law

There is no comparable Federal law. The state has given the Commission broad authority to collect data and make assessments related to energy matters within the state.

Policy Statement Overview

The Commission has broad statutory authority to collect data for assessing and forecasting the State's energy needs. Distributed generation is an important element in California's energy planning. In order to accurately assess and forecast California's energy needs, as well as, determine the effectiveness of programs and incentives offered by the Commission and the CPUC the Commission will need to collect data associated with specific deployment of DG.

In early April 2003, the CPUC issued Decision 03-04-030, adopting policies and mechanisms related to the collection of a CRS from customers categorized as departing load. The creation of the CRS is consistent with California's intent to recover the costs incurred by the California Department of Water Resources to procure electricity on behalf of the state's investor-owned utilities: Pacific Gas & Electric, Southern California Edison, and San Diego Gas & Electric. The CRS and exemptions from CRS allowed under Decision 03-04-030 may impact deployment of new DG, and future energy planning for the state.

The CPUC requested that the Commission determine eligibility for a CRS Exemption, consistent with the policies outlined in CPUC Decision 03-04-030, given the Commission is the lead energy policy agency with expertise in data collection of this nature. The Commission believes the data to be important information that should be included in the IEPR issued by the Commission. Additionally, the service the Commission provides in collecting this data and determining eligibility for CRS exemptions demonstrates cooperation among state agencies with energy responsibilities.

LOCAL MANDATE DETERMINATION

The proposed changes, if adopted, would not impose a mandate on local agencies or school districts.

COST/SAVINGS ESTIMATE

The Commission has determined that the proposed changes, if adopted, would not result in any costs or savings to other state agencies, nor costs to any local agencies or school districts, including such costs as are required to be reimbursed under Government Code section 17500 et seq. The Commission has also determined that the proposed regulations, if adopted, would not result in any other nondiscretionary cost or savings imposed on local agencies. There would be no costs or savings in federal funding to the state. The Commission is in the process of developing a staff position that would coordinate all DG related work within the Commission. Any responsibilities that would occur as a result of this rulemaking would be incorporated into that staff person's duties. Additionally, minor IT in maintaining the data in a computerized format, including adding and updating information on the Commission website may be incurred. A completed Fiscal Impact Statement form, prepared in accordance with instructions

adopted by the Department of Finance, is available by contacting Linda Merdinger at (916) 654-3951 or by e-mail at lmerding@energy.state.ca.us.

INITIAL DETERMINATION OF NO STATEWIDE ADVERSE IMPACT

The Commission has made an initial determination that the action, if adopted, would not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

This determination is based on the nature of the proposed regulations. If adopted, they would not impose substantive requirements on businesses. Instead, they would establish procedures for the Commission to collect data on DG, and based on the data and the CPUC's adopted criteria, allow the CPUC to determine eligibility for a CRS exemption. By establishing a procedure for data collection from DG for CRS exemptions, the Commission expects anyone in the DG industry who qualifies for an exemption to benefit from cost savings by not having to pay energy costs that otherwise rest on generators and consumers from the energy crisis of 2000-01. The direct benefits from the existence of a CRS exemption stem from the CPUC's decision, not the action of the Commission in implementing this rulemaking. The Commission is requesting that the information needed to determine whether a customer is qualified for an exemption be provided to the Commission for placement in the Queue, assessment of impacts on statewide energy planning, and assessment of the pros and cons of a CRS exemption for departing loads.

COST IMPACT ON PRIVATE PERSONS OR DIRECTLY AFFECTED BUSINESSES

The Commission is not aware of any specific impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. This regulation will not affect small businesses, as the regulation requires utilities to forward data that customers intending to depart from the electricity grid would need to submit to the electric utility where the customer is located, and the CPUC in order to receive a CRS exemption. The reporting requirements are not mandated for all businesses. Customers wishing to receive CRS exemptions must provide information to the utilities as required by the CPUC. The Commission is requiring the utilities and customers wishing to receive CRS exemptions to provide information that will allow the Commission to track the CRS exemptions and assess whether customers are eligible for such exemptions.

The tracking of CRS exemptions and maintaining a Queue will ensure that customers pay their fair share of any cost incurred by the state during the energy crisis, as well as, provide information for critical energy resource planning by the Commission. The state does not want to limit or restrict deployment of DG that has proven to have benefits on

the environment, reliability of the electric grid, and economic development in the state. The state also does not want to leave bundled customers in a position of paying for costs that were not incurred on their behalf during the energy crisis.

For these reasons, the Commission finds that it is necessary for the health, safety, or welfare of the people of the state, that this regulation requiring a report, apply to business.

ASSESSMENT OF EFFECT ON JOBS AND BUSINESS EXPANSION

The proposed regulations would have no foreseeable effect on the creation or elimination of jobs, the creation or elimination of businesses within the state, or the expansion of businesses currently doing business within the state. Neither the existing regulations nor the proposed amendments impose substantive requirements; they merely establish procedures for the Commission to collect data from customer generators concerning aspects of their generating units. The proposed regulations will provide a process for the collection of data that will assist the state in making accurate assessments of the DG aspects of the energy industry and allow for timely qualification and tracking of CRS exemptions for eligible facilities.

HOUSING EFFECTS STATEMENT

Pursuant to Government Code section 11346.5(a)(12), the Commission has determined, based on the nature of the proposed changes, that they will not have a significant effect on housing costs.

CONSIDERATION OF ALTERNATIVE PROPOSALS

The Commission must determine that no reasonable alternative considered by it, or that has otherwise been identified and brought to its attention, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AGENCY CONTACT

Inquiries concerning the proposed amendment should be directed to Darcie Houck, by calling (916) 654-3855, by e-mail at dhouck@energy.state.ca.us, or Scott Tomashefsky by calling (916) 654-4896, by e-mail at stomashe@energy.state.ca.us.

STATUTORY AUTHORITY AND REFERENCE

Authority: Public Resources Code sections 25213 and 25218(e)

Reference: Public Resources Code sections 25216, 25216.5, 25301, and 25320